

  
1081278 - R8 SDMS

BRETT L. TOLMAN (#8821), United States Attorney  
DANIEL D. PRICE (#2646), Assistant United States Attorney  
185 South State Street, Suite 400  
Salt Lake City, UT 84111  
(801) 325-3234 (PHONE)  
(801) 524-6924 (FAX)  
daniel.price2@usdoj.gov

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

SEP 05 2006

MARKUS B. ZIMMER, CLERK  
BY \_\_\_\_\_  
DEPUTY CLERK

MARK C. ELMER (*Pro hac vice*)  
Trial Attorney, Environmental Enforcement Section  
United States Department of Justice  
1961 Stout Street, 8<sup>th</sup> Floor  
Denver, CO 80294  
(303) 844-1352 (PHONE)  
(303) 844-1350 (FAX)  
mark.elmer@usdoj.gov

*Attorneys for the United States of America*

---

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

UNITED STATES OF AMERICA,

*Plaintiff,*

vs.

UNITED PARK CITY MINES COMPANY,  
ATLANTIC RICHFIELD COMPANY,  
FALCONBRIDGE LIMITED, and  
NORANDA MINING INC.,

*Defendants.*

Case No.

COMPLAINT

Judge Paul G. Cassell

DECK TYPE: Civil

DATE STAMP: 09/05/2006 @ 15:07:50

CASE NUMBER: 2:06CV00745 PGC

The United States of America, by authority of the Attorney General, and at the request of  
the United States Environmental Protection Agency ("EPA"), states for its complaint:

### NATURE OF ACTION

1. This is a civil action under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607, to recover costs incurred by the United States in response to the release or threatened release of hazardous substances from the Richardson Flat Tailings Site near Park City, Utah (the "Site").

### JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607(a) and 9613(b).

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c) and 42 U.S.C. § 9613(b).

### DEFENDANTS

4. Defendant United Park City Mines Company ("UPCM") is a corporation incorporated under the laws of the State of Delaware, with its principal place of business at 900 Main Street, Suite 6107, Park City, Utah 84060.

5. Defendant Atlantic Richfield Company ("ARCO") is a corporation incorporated under the laws of the State of Delaware, with its principal place of business at 28100 Torch Parkway, Warrenville, Illinois 60555.

6. Defendant Falconbridge Limited ("Falconbridge") is a Canadian corporation, with its principal place of business at BCE Place, 181 Bay Street, Suite 200, Toronto, Canada M5J 2T3.

7. Defendant Noranda Mining Inc. ("Noranda") is a corporation incorporated under

the laws of the State of Delaware , with its principal place of business at 801 Crescent Centre Drive, Suite 600, Franklin, Tennessee 37067.

### GENERAL ALLEGATIONS

#### **A. The Site**

8. The Richardson Flat Tailings Site consists of approximately 160 acres outside Park City, Utah immediately southeast of the junction of U.S. Highway 40 and Utah Highway 248.

9. From the late 1800s through approximately 1982, the Site was actively used as a mine tailings impoundment.

10. Defendant United Park City Mines Company ("UPCM") has owned the Site since its incorporation in 1953.

11. In 1970, UPCM leased the Site along with other mining-related properties to Park City Ventures, a Utah general partnership between the Anaconda Company (now part of Defendant Atlantic Richfield Company ("ARCO")) and ASARCO, Inc.

12. On a portion of the property leased from UPCM, Park City Ventures constructed and operated a mill, known as the Ontario Mill. Between June 1975 and January 1978, the Ontario Mill generated tailings that were deposited at the Richardson Flat Tailings Site.

13. In August 1979, Park City Ventures transferred its lease with UPCM (including the Ontario Mill and the Richardson Flat Tailings Site) to Noranda Exploration Inc., who in turn sold it to Noranda Mining Inc. ("Noranda"). Noranda operated the Ontario Mill from August 1980 through August 1981 generating tailings that were deposited at the Site. UPCM terminated

the lease in April 1982.

14. There are currently approximately 7 million tons of mine tailings at the Site.

**B. EPA Response Actions**

15. In the mid-1980s, EPA conducted an initial investigation of the Site, which revealed that the Site (including the tailings and surface and groundwater) was contaminated with hazardous substances, including heavy metals such as arsenic, cadmium, lead, and zinc.

16. On June 24, 1988, EPA proposed to add the Site to the National Priorities List ("NPL"). This initial proposal was withdrawn, and on February 7, 1992, EPA re-proposed adding the Site to the NPL. No final action has been taken with respect to this proposed listing.

17. On September 28, 2000, EPA and UPCM entered into an Administrative Order on Consent ("AOC"). The AOC required UPCM to conduct a remedial investigation and feasibility study ("RI/FS") at the Site.

18. In September 2004, UPCM completed both the remedial investigation and feasibility study.

19. EPA published its proposed remedial action plan on September 5, 2004. Following public comment, EPA issued a record of decision ("ROD") for the Site on July 6, 2005, which describes EPA's selected remedy.

**CERCLA LIABILITY**

20. The Site is a "facility" within the meaning of Sections 101(9) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(9) and 9607(a).

21. The substances contaminating soils and waters at the Site are "hazardous

substances," within the meaning of Sections 101(14), 104(a), and 107(a) of CERCLA, 42 U.S.C. §§ 9601(14), 9604(a), and 9607(a).

22. There was a "release" or "threatened release" of hazardous substances into the "environment" at and from the Site, within the meaning of Sections 101(8), 101(14), 101(22), 104(a), and 107(a) of CERCLA, 42 U.S.C. §§ 9601(8), 9601(14), 9601(22), 9604(a), and 9607(a).

23. Hazardous substances were "disposed" of at the Site, within the meaning of Sections 101(14), 101(29), and 107(a) of CERCLA, 42 U.S.C. §§ 9601(14), 9601(29), and 9607(a), on numerous occasions from the late 1800s until at least 1982.

24. Each Defendant is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

25. Defendant UPCM is the current "owner or operator" of the Site within the meaning of Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and is therefore liable for all costs incurred by the United States as a result of the response action at the Site pursuant to CERCLA Section 107(a)(1).

26. Defendant UPCM was an "owner or operator" of the Site within the meaning of Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), at the time of disposal of hazardous substances at the Site and is therefore liable for all costs incurred by the United States as a result of the response action at the Site pursuant to CERCLA Section 107(a)(2).

27. Defendant ARCO (through Park City Ventures) was an "owner or operator" of the Site within the meaning of Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), at the time of

disposal of hazardous substances at the Site and is therefore liable for all costs incurred by the United States as a result of the response action at the Site pursuant to CERCLA Section 107(a)(2).

28. Defendant Noranda was an "owner or operator" of the Site within the meaning of Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), at the time of disposal of hazardous substances at the Site and is therefore liable for all costs incurred by the United States as a result of the response action at the Site pursuant to CERCLA Section 107(a)(2).

29. On information and belief, Defendant Falconbridge is a successor-in-interest to Noranda and, therefore, succeeds to Noranda's liability under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), as the owner and operator of the Site at a time when hazardous substances were disposed of therein.

**CLAIM FOR RELIEF**  
**CERCLA COST RECOVERY**

30. The allegations of the foregoing paragraphs are incorporated herein by reference.

31. The United States has incurred more than \$600,000 in response costs, as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), plus associated interest, as a result of the release or threatened release of hazardous substances at the Site.

32. The response costs were incurred by the United States in a manner not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

33. Defendants are jointly and severally liable to the United States for the payment of all costs incurred by the United States as a result of the response actions taken at the Site

the Site pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

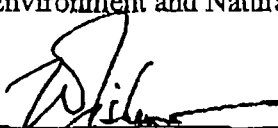
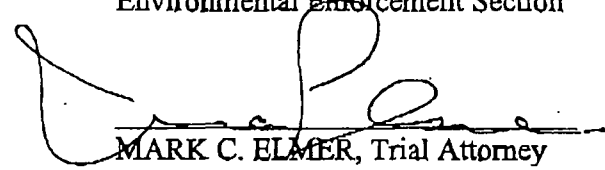
PRAYER FOR RELIEF

WHEREFORE, the United States respectfully requests that this Court enter judgment against Defendants as follows:

- A. Ordering Defendants to pay all costs incurred by the United States in response to the release or threatened release of hazardous substances at or from the Site;
- B. Awarding the United States its costs and disbursements in this action; and
- C. Granting the United States such other and further relief as the Court deems just and proper.

Respectfully submitted,

SUE ELLEN WOOLDRIDGE  
Assistant Attorney General  
Environment and Natural Resources Division

  
\_\_\_\_\_  
W. BENJAMIN FISHEROW  
Deputy Chief  
Environmental Enforcement Section  
\_\_\_\_\_  
MARK C. ELMER, Trial Attorney  
Environmental Enforcement Section  
U.S. Department of Justice  
1961 Stout Street, 8<sup>th</sup> Floor  
Denver, CO 80294  
(303) 844-1352 (PHONE)  
(303) 844-1350 (FAX)

BRETT L. TOLMAN  
United States Attorney  
District of Utah



DANIEL D. PRICE  
Assistant United States Attorney  
District of Utah  
185 South State Street, Suite 400  
Salt Lake City, UT 84111

OF COUNSEL:

MARGARET ("PEGGY") J. LIVINGSTON  
Senior Enforcement Attorney  
U.S. Environmental Protection Agency, Region 8  
999 Eighteenth Street, Suite 300 (8-ENFL)  
Denver, CO 80202-2466

*Attorneys for the United States*